

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MONICA V. BOYD,

Plaintiff,

v.

MICHAEL ASTRUE, Commissioner of  
Social Security Administration,

Defendant.

CASE NO. C06-5530FDB

ORDER ADOPTING REPORT  
AND RECOMMENDATION

Plaintiff alleges disability owing to concentration and memory problems resulting from a slip and fall incident in a Walgreen's store in February 2003. The Magistrate Judge recommends that this Court affirm the Administrative Law Judge's ("ALJ") decision. Plaintiff has filed objections asserting that the Magistrate Judge failed to analyze the ALJ's rejection of Dr. Cripe's opinion using the correct legal standard. Dr. Cripe is a non-treating physician.

A court must uphold the determination that a plaintiff is not disabled if the ALJ applied the proper legal standard and there is substantial evidence in the record as a whole to support the decision. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9<sup>th</sup> Cir. 1986). If the evidence admits of more than one rational interpretation, the court must uphold the Secretary's decision. *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).

An ALJ is entitled to resolve conflicts in the medical evidence. *Sprague v. Bowen*, 812 F.2d 1226, 1230 (9<sup>th</sup> Cir. 1987). If a treating doctor's opinion is contradicted by another doctor, the Commissioner

1 may not reject this opinion without providing “specific and legitimate reasons” supported by substantial  
2 evidence in the record for doing so. *Murray v. Heckler*, 722 F.2d 499, 502 (9<sup>th</sup> Cir. 1983). “The opinion  
3 of a nonexamining physician cannot by itself constitute substantial evidence that justifies the rejection of  
4 the opinion of either an examining physician or a treating physician.” *Lester v. Chater*, 81 F.3d 821, 831  
5 (9<sup>th</sup> Cir. 1996).

6 In this case, Dr. Cripe performed a neuropsychological evaluation, which included a clinical  
7 interview, a mental status examination, and numerous tests. Dr. Cripe noted that tests following the fall  
8 did not show any specific injury, and that he felt she presented with “more that of a psychological stress  
9 reaction than of frank brain injury.” He concluded that her employability was “tenuous,” and that her  
10 “psychological status would interfere with reliable persistent work behavior.”


11 The Report and Recommendation (“R&R”) sets forth the ALJ’s review of Dr. Cripe’s report at  
12 pages 3-4. The ALJ concluded from a review of all the evidence that Plaintiff Boyd was compromised by  
13 nonexertional limitations: major depressive disorder, anxiety disorder, and an amnesic disorder, but that  
14 these impairments “give her only mild limits of daily living, mild to moderate limits on social functioning,  
15 and moderate limits on concentrations, persistence, and pace.” The ALJ concluded further that Plaintiff  
16 was capable of performing simple, routine tasks, with limited contact with co-workers, and limited contact  
17 with supervision. The ALJ stated that Dr. Cripes’ evaluation appears to be based largely on subjective  
18 complaints and the functional limits that he assessed are given little weight.

19 The Court has read the entire decision of the ALJ. The ALJ’s assessment of Dr. Cripe’s opinion  
20 was not rejected in its entirety; rather the functional limits that he assessed are given little weight. In  
21 reaching this conclusion, the ALJ noted that the “Claimant’s lack of effort at times negatively affects her  
22 credibility,” and this lack of credibility is reflected in the Record. Because her credibility is undermined,  
23 her subjective complaints become problematic when viewed against the entire record. The ALJ was correct  
24 to give Dr. Cripe’s opinion of Plaintiff’s functional limits little weight. Accordingly, the Magistrate’s  
25 Report and Recommendation that Decision be affirmed will be adopted.

26 The Court, having reviewed plaintiff’s complaint, the Report and Recommendation of Judge J.  
27 Kelley Arnold, United States Magistrate Judge, and objections to the report and recommendation, and the  
28 remaining record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation;
- (2) The administrative decision is AFFIRMED; and
- (3) The Clerk is directed to send copies of this Order to plaintiff's counsel, defendant's counsel and Magistrate Judge J. Kelley Arnold.

DATED this 6<sup>th</sup> day of April 2007.

  
\_\_\_\_\_  
FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE